

Message Text

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SUBJECT: PROPOSAL ON TRANSFER OF SANCTIONS

REF: (A) MEXICO 11386; (B) STATE 157930

1. EMBASSY IS FORWARDING ITS TRANSLATION OF THE FOREIGN MINISTRY'S MEMORANDUM OF AUGUST 31 ON TRANSFER OF SANCTIONS. SPANISH TEXT WAS SENT REFTEL A.
2. THE GOM MEMORANDUM REPLIES TO SIX QUESTIONS PUT TO THE MINISTRY UNDER INSTRUCTIONS FROM THE DEPARTMENT IN REFTEL B. TO MAKE THE TRANSLATION OF THE MEXICAN REPLY EASIER TO USE, WE HAVE INCLUDED THE TEXT OF THE ORIGINAL QUESTIONS IMMEDIATELY BEFORE THE SECTION OF THE TRANSLATION OF THE MEXICAN REPLY.
3. TEXT BEGINS: "IN THE AIDE MEMOIRE OF THE EMBASSY OF THE UNITED STATES OF AMERICA, DATED JUNE 29, 1976, VARIOUS QUESTIONS ARE FORMULATED WITH REFERENCE TO THE PROPOSAL MADE BY THE SECRETARIAT FOR FOREIGN RELATIONS TO 'EXPLORE THE POSSIBILITY OF FINDING PROCEDURES TO FACILITATE THE EXCHANGE BETWEEN OUR TWO COUNTRIES OF CERTAIN CATEGORIES OF PRISONERS.'"
4. "IN ORDER TO REPLY TO THESE, IT IS APPROPRIATE TO POINT OUT IN THE FIRST PLACE THAT, IN THE OPINION OF THE GOVERNMENT OF MEXICO, A POSSIBLE INTERNATIONAL AGREEMENT IN THIS

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MATTER WOULD NECESSARILY HAVE TO BE BASED ON THE PRINCIPLE

OF THE SOCIAL REHABILITATION OF THE OFFENDER. IN EFFECT, IT IS BELIEVED THAT THE EXECUTION OF A CRIMINAL SENTENCE IN A COUNTRY DIFFERENT FROM THAT IN WHICH THE SENTENCE IS PRO- NOUNCED IS JUSTIFIED IN ITS OBJECTIVE OF FINDING POSSIBILI- TIES FOR THE READAPTATION OF THE CRIMINAL INTO THE SOCIAL MEDIUM."

5. FIRST AND SECOND US QUESTIONS: TO WHAT OFFENSE SHOULD ANY TREATY ARRANGEMENTS APPLY? SECOND: SHOULD SOME CATEGO- RIES OF OFFENDERS BE EXCLUDED FROM BENEFITING FROM THE ARRANGEMENTS? REPLY: "STARTING FROM THIS POINT OF VIEW, THE AGREEMENT WOULD BE APPLIED SOLELY TO NATIONALS OF ONE OF THE TWO STATES HAVING THEIR HABITUAL RESIDENCE IN THEIR COUN- TRY OF ORIGIN. ON THE OTHER HAND, IT WOULD APPEAR REASONABLE TO EXCLUDE THOSE OFFENDERS CONDEMNED TO VERY SHORT PRISON SENTENCES. IN PRINCIPLE, THERE SEEMS TO BE NO REASON TO LIMIT THE APPLICATION OF THE AGREEMENT TO DETERMINED CRIMES. THE ABOVE AFFIRMATION, HOWEVER, MUST BE TAKEN INTO CONSIDERA- TION TOGETHER WITH THE FOLLOWING OBSERVATIONS: IN THE FIRST PLACE, THE PRINCIPLE OF DOUBLE INCRIMINATION, WELL KNOWN IN EXTRADITION MATTERS, WOULD ALSO HAVE TO BE RESPECTED IN AN AGREEMENT SUCH AS THE ONE CONTEMPLATED. IN THE SECOND PLACE, THERE ARE CERTAIN ACTIONS PENALIZED BY LAW WHICH DO NOT MEET THE CHARACTERISTICS NECESSARY TO JUSTIFY OR EXPLAIN INTERNA- TIONAL INVOLVEMENT IN THE EXECUTION OF SENTENCES (POLITICAL CRIMES OR PURELY MILITARY ONES, VIOLATIONS OF IMMIGRATION LAWS). FINALLY, IT WOULD BE NECESSARY TO INVESTIGATE WHETHER THE AGREEMENT WOULD ONLY INCLUDE CRIMES HAVING FEDERAL JURISDIC- TION OR WHETHER THOSE OF THE COMMON ORDER MIGHT ALSO BE INCLUDED."

6. THIRD U.S. QUESTION: WOULD THE ARRANGEMENTS PERMIT A CONVICTED PERSON TO BE TRANSFERRED TO A PRISON IN HIS HOME COUNTRY PEND- ING PROSECUTION OF HIS APPEAL IN THE COURTS OF THE COUNTRY IN WHICH HE WAS CONVICTED IN ORDER TO MINIMIZE THE TIME HE WOULD BE INCARCERATED IN A FOREIGN JAIL? REPLY: "IT WOULD CORRESPOND TO THE STATE IN WHICH THE SENTENCE IS DICATATED, JUDGING FROM THE PERSONAL CIRCUMSTANCES OF THE ACCUSED AND HIS POSSIBILITIES FOR READAPTATION, TO REQUEST THE OTHER TO MAKE ITSELF RESPONSIBLE FOR THE EXECUTION OF THE SENTENCE OF LIMITED OFFICIAL USE

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DEPRIVATION OF LIBERTY. THE STATE RECEIVING THE REQUEST COULD, UNDER CERTAIN CIRCUMSTANCES, REFUSE TO HONOR THE REQUEST. IT DOES NOT APPEAR POSSIBLE FOR THE TRANSFER OF THE PRISONER TO BE CARRIED OUT BEFORE THE SENTENCE HAS THE FORCE OF A CASE WHICH HAS ALREADY BEEN JUDGED. AMONG OTHER CONSIDERATIONS, ONE MUST TAKE INTO CONSIDERATION THE FACT THAT SUCH A MEASURE MIGHT SERIOUSLY PREJUDICE THE POSSIBILITIES FOR THE DEFENSE OF THE ACCUSED."

7. FOURTH US QUESTION: A CRIMINAL PENALTY IMPOSED IN ONE COUNTRY, SUCH AS INDETERMINATE SENTENCE, MAY NOT BE KNOWN IN THE LEGAL SYSTEM OF THE OTHER COUNTRY. WHAT PROCEDURES SHOULD BE ADOPTED TO INSURE THAT IN SUCH CASES A CRIMINAL PENALTY IMPOSED IN ONE COUNTRY WILL BE SUBSTANTIALLY ENFORCEABLE IN THE OTHER COUNTRY?

REPLY: "WITH REGARD TO THE HYPOTHESIS OF A CRIMINAL PENALTY KNOWN IN ONE COUNTRY BUT UNKNOWN IN THE OTHER, SUCH AS AN INDETERMINATE SENTENCE, TWO MODES OF ACTION MAY BE EXPLORED:

A) EXCLUDE SUCH CASES FROM APPLICATION UNDER THE AGREEMENT, OR B) PROVIDE FOR SUBSTITUTION OF SUCH A SENTENCE BY ANOTHER EQUIVALENT ONE PERMITTED BY THE LEGISLATION OF THE COUNTRY IN WHICH THE SENTENCE IS TO BE CARRIED OUT."

8. FIFTH US QUESTION: HOW, AND BY WHAT LAW, SHOULD CONDITIONS FOR PAROLE AND/OR CONDITIONAL RELEASE BE DETERMINED, IF SUCH PAROLE OR RELEASE IS DEEMED APPROPRIATE? REPLY: "THE LAWS OF THE STATE RECEIVING THE REQUEST WOULD BE THE ONES WHICH WOULD BE APPLICABLE FOR EXECUTION OF THE SENTENCE. CONSEQUENTLY, THE PAROLE OF THE OFFENDER WOULD BE GRANTED IN THOSE CASES AND UNDER THOSE CONDITIONS WHICH ARE FIXED BY SAID LAWS."

9. SIXTH US QUESTION: WOULD A PRISONER BE REQUIRED AGAINST HIS WILL TO RETURN TO HIS OWN COUNTRY TO SERVE A SENTENCE IMPOSED ABROAD, OR WOULD SUCH ARRANGEMENTS BE MADE ONLY WITH THE PRISONER'S CONSENT? REPLY: "WITH REFERENCE TO THE CONSENT OF THE PRISONER, IT DOES NOT APPEAR THAT IT NEED BE REQUIREMENT. UNDOUBTEDLY, SINCE TRANSFER TO A PENAL ESTABLISHMENT IN HIS COUNTRY OF ORIGIN IS A MEASURE TAKEN FOR THE FACILITATION OF HIS SOCIAL READAPTATION, THE COMPETENT AUTHORITY SHOULD TAKE INTO ACCOUNT ALL THE PERSONAL CIRCUMSTANCES OF THE OFFENDER, INCLUDING HIS ATTITUDE IN LIMITED OFFICIAL USE

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REGARD TO HIS EVENTUAL TRANSFER."

10. "HAVING REPLIED TO THE SIX QUESTIONS CONTAINED IN THE EMBASSY'S AIDE MEMOIRE IN THE MANNER IN WHICH THEY WERE PRESENTED, THE SECRETARIAT WISHES TO ADD A FINAL CONSIDERATION. IN ORDER TO GIVE VALIDITY IN MEXICO TO A FOREIGN PENAL SENTENCE, IT IS CONSIDERED INDISPENSABLE TO ESTABLISH IN THE FEDERAL CODE OF PENAL PROCEDURES A PROCEDURE BYMEANS OF WHICH EVERY REQUEST FOR THE EXECUTION OF A CRIMINAL SENTENCE BE PRESENTED BEFORE THE JUDGE, WHOSE TASK IT WILL BE TO EXAMINE IT AND GIVE IT, IN CASE HE FINDS IT APPROPRIATE, THE EXEQUATUR." TEXT ENDS.THOMPSON

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